

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 04-10010PBS
)
 MATTHEW DWINELLS)

MOTION IN LIMINE TO EXCLUDE
EVIDENCE OF PRIOR CONVICTIONS

The defendant Matthew Dwinells respectfully moves that this Court preclude the government from using any conviction involving any actual or threatened violence to impeach him, should he choose to testify in his own defense. As grounds for this motion, the defendant states that any such prior convictions are inadmissible under Fed. R. Evid. 401, 402, 403, 404(b), and 609(a) (1) and 609(b).

The government has not identified any convictions it intends to offer as impeachment should Dwinells testify in his own defense. Dwinells submits that the only conviction that is not outside the time period set in Fed. R. Evid. 609(b) is an assault and battery from the Lawrence District Court for which he was placed on probation in 1996. This conviction should be excluded because its probative value does not outweigh its prejudicial effect. The crime is not one that implicates Mr. Dwinells' truthfulness; instead, it carries great potential prejudice because it would likely be considered as evidence of Dwinells' propensity for criminal conduct in general. In the alternative,

the government should not be permitted to introduce evidence of the nature of the conviction.

Furthermore, as to the convictions that fall outside the 10-year time limit set forth in Rule 609(b), the government has not met the notice requirement of that rule. Nor can the government overcome the presumption of inadmissibility for stale convictions.

For these reasons, this court should preclude the government from introducing evidence of Dwinells' prior conviction for assault and battery and any other more remote criminal convictions.

MATTHEW DWINELLS
By his attorney,
/s/ Syrie D. Fried

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